



AMERICAN CONSTITUTIONALISM
 VOLUME I: STRUCTURES OF GOVERNMENT
 Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 7: The Republican Era – Powers of the National Government

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Hoke and Economides v. United States, 227 U.S. 308 (1913)

There had long been movements against prostitution in the United States, but those efforts had primarily been directed at states and localities. In the late nineteenth and early twentieth centuries, however, reformers led by Jane Addams gained new leverage with a wave of sensationalistic accounts in newspapers, books, and films of women and girls being coerced or seduced into “white slavery” in national and international forced-prostitution rings. Chicago Republican James Mann took up the cause in the House of Representatives. Mann was at the forefront of several Progressive causes, strengthening the Interstate Commerce Commission, sponsoring the Pure Food and Drugs Act, and fighting for the constitutional amendment to guarantee women’s suffrage. In 1910, he won passage of the Mann Act, aka the White Slave Act, which prohibited the transportation across state lines of any individual for immoral purposes.

Months after the passage of the Act, Effie Hoke and Basile Economides were charged with enticing and aiding three women to travel from New Orleans to Beaumont, Texas, to engage in prostitution. They challenged the Mann Act as outside the scope of Congress’s constitutional authority.

JUSTICE MCKENNA delivered the opinion of the Court.

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Plaintiffs in error admit that the States may control the immoralities of its citizens. Indeed, this is their chief insistence, and they especially condemn the act under review as a subterfuge and an attempt to interfere with the police power of the States to regulate the morals of their citizens and assert that it is in consequence an invasion of the reserved powers of the States. There is unquestionably a control in the States over the morals of their citizens, and, it may be admitted, it extends to making prostitution a crime. It is a control, however, which can be exercised only within the jurisdiction of the States, but there is a domain which the States cannot reach and over which Congress alone has power; and if such power be exerted to control what the States cannot it is an argument for -- not against -- its legality. Its exertion does not encroach upon the jurisdiction of the States. We have cited examples; others may be adduced. The Pure Food and Drugs Act . . . is a conspicuous instance. In all of the instances a clash of national legislation with the power of the States was urged, and in all rejected.

Our dual form of government has its perplexities, State and Nation having different spheres of jurisdiction, as we have said, but it must be kept in mind that we are one people; and the powers reserved to the States and those conferred on the Nation are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral. This is the effect of the decisions, and surely if the facility of interstate transportation can be taken away from the demoralization of lotteries, the debasement of obscene literature, the contagion of diseased cattle or persons, the impurity of food and drugs, the like facility can be taken away from the systematic enticement to and the enslavement in prostitution and debauchery of women, and, more insistently, of girls.

. . . Motives executed by actions may make it the concern of Government to exert its powers. Right purpose and fair trading need no restrictive regulation, but let them be transgressed and penalties and prohibitions must be applied. We may illustrate again by the Pure Food and Drugs Act. Let an article be debased by adulteration, let it be misrepresented by false branding, and Congress may exercise its prohibitive power. It may be that Congress could not prohibit the manufacture of the article in a State. It may be that Congress could not prohibit in all of its conditions its sale within a State. But Congress may



prohibit its transportation between the States, and by that means defeat the motive and evils of its manufacture. . . .

Of course it will be said that women are not articles of merchandise, but this does not affect the analogy of the cases; the substance of the congressional power is the same, only the manner of its exercise must be accommodated to the difference in its objects. It is misleading to say that men and women have rights. Their rights cannot fortify or sanction their wrongs; and if they employ interstate transportation as a facility of their wrongs, it may be forbidden to them to the extent of the [Mann] act . . . and we need go no farther in the present case.

. . . .
Judgment *affirmed*.

Note: In response to a report in 1913 that Attorney General James McReynolds had directed federal prosecutors to limit their application of the Mann Act to cases of commercial prostitution, church groups organized a campaign denouncing the Wilson administration for watering down the act and the Justice Department was forced to deny that any such policy existed. The scope of the Act was put to the test in 1917. In *Caminetti v. U.S.* (1917), the Court upheld the convictions of Drew Caminetti and Maury Diggs for violating the Mann Act by taking the train with their mistresses from California to Reno, Nevada, one step ahead of their wives and the gossip columnists. It was a scandalous case, all involved were from socially prominent families and Caminetti's father was the recently appointed Commissioner of Immigration, requiring the attention of Cabinet officials and congressional committees. In deciding the case, the Court settled the issue of whether the statute applied to noncommercial vice. With McReynolds, a likely dissenter, not participating, the Court divided five to three.

Justice Day, writing for the Court, explained:

While such immoral purpose would be more culpable in morals and attributed to baser motives if accompanied with the expectation of pecuniary gain, such considerations do not prevent the lesser offense against morals of furnishing transportation in order that a woman may be debauched, or become a mistress or a concubine, from being the execution of purposes within the meaning of this law. To say the contrary would shock the common understanding of what constitutes an immoral purpose when those terms are applied, as here, to sexual relations.

. . . .
The transportation of passengers in interstate commerce, it has long been settled, is within the regulatory power of Congress, under the commerce clause of the Constitution, and the authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question.

Justice McKenna, writing for the Chief Justice and Justice Clarke, dissented, and urged the Court to read the language of the statute narrowly:

The author of the bill was Mr. Mann, and in reporting it from the House committee on interstate and foreign commerce he declared for the committee that it was not the purpose of the bill to interfere with or usurp in any way the police power of the states, and further, that it was not the intention of the bill to regulate prostitution or the places where prostitution or immorality was practiced, which were said to be matters wholly within the power of the states, and over which the Federal government had no jurisdiction. And further explaining the bill, it was said that the sections of the act had been 'so drawn that they are limited to the cases in which there is an act of transportation in interstate commerce of women for the purposes of prostitution.' And again:

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'The White Slave Trade.-A material portion of the legislation suggested and proposed is necessary to meet conditions which have arisen within the past few years. The legislation is needed to put a stop to a villainous interstate and international traffic in women and girls. The legislation is not needed or intended as an aid to the states in the exercise of their police powers in the suppression or regulation of immorality in general. It does not attempt to regulate the practice of voluntary prostitution, but aims solely to prevent panderers and procurers from compelling thousands of women and girls against their will and desire to enter and continue in a life of prostitution.' *Cong. Rec.* .

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In other words, it is vice as a business at which the law is directed, using interstate commerce as a facility to procure or distribute its victims.

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